

IN THE HIGH COURT OF DELHI AT NEW DELHI

M.A.C. APP. No.759/2005

The New India Assurance Company Ltd.
.....Appellant
! through : Mr. R.K.Tripathi, Adv.

VERSUS

\$ Smt.Bhupinder Kaur & Ors. Respondents
^ through : Mr. Zakir Hussain, Adv.
 for respondents No.1 to 7

RESERVED ON : 02-02-2007

% DATE OF DECISION : 08-02-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

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1. Unfortunately for the claimants, victory before the learned Tribunal is but a bubble which has been successfully bursted by learned counsel for the appellant.

2. 10.2.1992 was an unfortunate day in the life of late Shri Baldev Singh.

3. The time was around 11.30 pm. Baldev Singh,

travelling on a 2 wheeler scooter had reached outer ring road, opposite Jahangir Puri. He was hit by a fast moving object, had to be probably a motor vehicle. He suffered serious injuries. On 12.2.1992, at around 12.25 am, he died at Hindu Rao Hospital, Delhi.

4. Baldev Singh was aged 42 years when he died. He was carrying on business as the sole proprietor of M/s.Nishan Tyre Soles at Karol Bagh.

5. The claim petition was filed by the mother of the deceased Smt. Nand Kaur, widow of the deceased Smt. Bhupinder Kaur and his 6 children. The said petition was dismissed in default on 9.8.1996. Restoration application was dismissed on 12.11.1999.

6. Some of the children were minor when the first claim petition was filed. They continued to be minor when it was dismissed. Accordingly, in the year 2000, another claim petition was filed by the widow and the children of the deceased. His mother has died by then.

7. Vide award dated 4.6.2005, learned Tribunal has awarded Rs.2,11,712/- as compensation to the claimants.

8. Appeal by the insurance company challenges the said

award.

9. Since the owner and driver of the offending vehicle had failed to contest, learned Trial Court had permitted the insurance company to take over the defence of the owner and the driver i.e. application of the insurance company under Section 170 of the M.V.Act 1988 was allowed.

10. There is thus no impediment in the insurance company filing and prosecuting the present appeal.

11. As per the learned Tribunal, no eye-witnesses were produced to establish the manner in which the accident took place.

12. According to the claimants, when travelling on his 2 wheeler, the deceased was hit by a mini bus bearing No.DBP 2622 stated to be driven by Prakash Chand, the owner-cum-driver of the vehicle.

13. Holding that it stood established from the evidence on record that Prakash Chand while driving mini bus No.DBP 2622 hit the scooter, learned MACT has determined the dependency.

14. Noting that there was no eye-witness and that mere absence of an eye-witness was no ground to reject a claim petition, learned Tribunal has opined as under:-

“Judging in the light of the said law laid down by the Hon'ble Supreme Court and in view of the said statement of Sh.Surender Kumar Bhatia Ex.P-3 and in view of the fact that R-1 was acquitted by the criminal court after criminal trial as mentioned on the third page of the FIR Ex.PW4/A and in view of the fact that the name of Sh.Surender Kumar Bhatia was cited as an eyewitness in the criminal trial as mentioned on the fourth page of the FIR Ex.PW4/A, the involvement of the vehicle No.DBP-2622 cannot be ruled out in the said accident. Applying the principle of strict liability to the present case and in view of my aforesaid discussion, I am of the considered opinion that the deceased Baldev Singh died in a road accident in which the vehicle No.DBP-2622 was involved. Accordingly, issue No.1 is disposed of in favour of the petitioners and against the respondents.”

15. It is apparent that the learned Tribunal has been influenced by the fact that Shri Surender Kumar Bhatia was cited as an eye witness in the criminal trial and in his statement to the police under Section 161 Cr.P.C., attested copy whereof was exhibited as Ex.P-3, involvement of the mini bus stood established.

16. I am afraid, learned Tribunal has been swayed by sympathies and thus has not appreciated the facts in the right perspective.

17. Surender Kumar Bhatia, maker of the statement before the police under Section 161 Cr.P.C., attested copy whereof was exhibited as Ex.P-3, was never examined as an eye-witness before the Tribunal. Thus, the insurance company

could not cross examine Surender Kumar Bhatia.

18. That is not all. The accident took place on 10.2.1992. Surender Kumar Bhatia surfaced after more than one month.

19. According to the claimants, in the month of March 1992, they published an advertisement declaring a reward to the person who would inform them as to who hit the scooter of the deceased on 10.2.1992.

20. According to the claimants, Surender Kumar Bhatia contacted them. He was taken to the police station where the investigating officer recorded his statement under Section 161 Cr.P.C.

21. Surender Kumar Bhatia surfacing after more than 1 month of the date of accident and that too pursuant to an offer of reward shows that Surender Kumar Bhatia is not a person who thought it to be his public duty to report an accident which he claims to have witnessed. He was induced by a reward. Where is the guarantee that Surender Kumar Bhatia did not make a false statement to the police? Where is the guarantee that Surender Kumar Bhatia was not a planted person?

22. This circumstance makes it all the more necessary to have Surender Kumar Bhatia in the witness box so that he

could be subjected to a cross examination. Only then, the truthfulness of his statement or his credibility could have been tested.

23. Claimants were fully aware of the aforesaid lacuna. Their witnesses have falsely deposed before the Tribunal.

24. PW-1, Gurbaksh Singh, in his examination-in-chief stated that Baldev Singh was his friend. That he died in an accident involving a bus in February 1992. That Baldev Singh had gone to Rohini on his 2 wheeler to meet a relative. A bus hit the scooter. Being crucial for my discussion, further testimony of PW-1 may be noted in the language of PW-1. He deposed as under:-

“The bus hit the scooter. I do not remember the bus and the scooter as the said incident had happened 12-13 years ago. I informed the police about the accident at 100 number and I along with brother of the deceased registered a case at P.S. Jahangir Puri. I along with brother of the deceased brought the dead body of the deceased. The police had read over the FIR to me and the photocopy of the same is marked 'A'. I was informed that the bus was driven in a rash and negligent manner and because of the reason, the said accident took place.”

25. In cross examination, PW-1 admitted that he was not present at the accident.

26. Obviously, PW-1 lied when he stated that the bus hit the scooter and that he did not remember the number of the

bus as the incident had happened 12-13 years ago.

27. FIR, Ex.P-1, has been registered on 11.2.1992 at 2.30 am. As noted above, the accident took place at around 11.40 pm on 10.12.1992. The FIR has been registered after approximately 3 hours. The FIR has been registered pursuant to DD Entry No.15 recorded at the police station on the basis of a message flashed by a PCR Van that Gurbaksh Singh had informed them that one Baldev Singh who had left his house on scooter No.DL-2SE 8343 had not reached home and that the PCR Van had found him injured on the road near P.S. Jahangir Puri. The injured was got admitted at Hindu Rao Hospital.

28. The admission entry record of Hindu Rao Hospital, Ex.P-4 shows that against the column name, "unknown" was written and thereafter "within brackets" the name Baldev Singh was written.

29. I may note that Ex.P-4 is a printed proforma purporting to be pertaining to Dr.R.M.L. Hospital but in hand, Hindu Rao Hospital has been over written.

30. PW-1 had merely informed the police that the deceased had not come back home. He had not spoken about the accident, much less gave information about the offending

bus.

31. I have gone through the record of the learned MACT with care. I could not find out any mechanical report pertaining to the bus in question.

32. Learned counsel for the respondents could not show me the copy of the inspection report.

33. The same could have thrown some light on the issue if it was noted therein that the bus had a fresh paint or there were traces of the bus hitting a blunt object i.e. a scooter.

34. The position which emerges from the evidence is that PW-1 gave a mere statement recorded by the PCR van when it received a telephonic call from PW-1 that the deceased had left his house on a scooter and had not returned. Thereafter, the PCR van found the deceased lying injured on the road. He was taken to Hindu Rao Hospital. He was firstly admitted as an unknown person but thereafter somebody gave the name of the deceased. In brackets, his name was noted. Obviously, PW-1 and the family of the deceased were worried due to his not returning home. DD entry shows that they had informed the police about the deceased not returning home. Obviously, they were in touch with the police. They were informed about a

person similar in description to Baldev Singh being admitted at Hindu Rao Hospital. PW-1 and brother of the deceased went to Hindu Rao Hospital. They recognized the dead body. Thereafter, name of the deceased was entered in the record within brackets after initial entry of unknown was recorded.

35. No fact is on record where from, applying *res ipsa loquitor*, a conclusion can be drawn, even in the absence of an eye witness. No legally admissible evidence has come on record to establish the involvement of the bus in the accident. Solitary evidence relied upon by the Tribunal, Ex.P-3, the statement of Surender Kumar Bhatia recorded by the police under Section 161 Cr.P.C., though admissible, but in the facts and circumstances of the case noted herein above, lacked in credibility. In the absence of Surender Kumar Bhatia entering the witness box it would not be safe to rely upon Ex.P-3.

36. The appeal is allowed.

37. The impugned award dated 4.6.2005 published by Shri Rakesh Tiwari, Judge, MACT, Delhi in suit No.367/2003 (old No.174/2000) is set aside.

38. However, noting that the deceased died in a hit and run accident, offending vehicle being untraced, claimants would

be entitled to the compensation from the common pool in sum of Rs.15,000/- pertaining to a death caused in a road accident where the offending vehicle is untraced.

39. Liberty is granted to the claimants to move an appropriate application under Section 163 of the Motor Vehicles Act 1988. Needless to state, pursuant to the said application necessary orders would be passed.

40. No costs.

February 08, 2007
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PRADEEP NANDRAJOG, J.